

**REMARKS**

This paper is submitted in response to the Office action dated December 7, 2009 (the “Office Action”).

Claims 1-25 and 27-30 were previously pending in the application.

Claims 4, 6, and 13 have been canceled in this paper.

New claims 31-33 have been added in this paper.

Accordingly, claims 1-3, 5, 7-12, 14-25, and 27-33 are now pending.

Claims 1-3, 5, 7-12, 14-25, and 27-30 stand rejected.

The amendments add no new matter. Support for the amendments may be found throughout Applicant’s Specification and Drawings as originally filed, for example in ¶68, 73-77; FIGs. 7A, 7B, 8A, 8B, 8C, and 8D. Applicant reserves the right to establish that the cited reference(s), or other references cited thus far or hereafter, do not qualify as prior art as to an invention embodiment previously, currently, or subsequently claimed. Applicant also reserves the right, for example in a continuing application, to pursue the previously pending claims or claims similar thereto. Applicant respectfully submits that the pending claims are allowable in view of the following remarks and the above amendments, and respectfully requests reconsideration of the pending rejections.

**Rejection of Claims under 35 U.S.C. § 112, second paragraph**

Claims 1-3, 5, 7-12, 14-25, and 27-30 stand rejected under 35 U.S.C. § 112, second paragraph as purportedly failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention.

First, the Office Action expresses a concern regarding the relationship between the recited “application” and “one or more applications” in claim 1.

In an effort to further prosecution, Applicant has amended claim 1. Applicant respectfully submits that the amendment address the concern expressed in the Office Action regarding these recitations in claim 1.

Second, the Office Action expresses a concern that it is unclear what is meant by the detecting whether one or more applications “are compatible with” the first application, as recited in claim 1.

Applicant respectfully notes that the original application teaches that “Part of the determination of whether sufficient resources are available involves taking into account the compatibility of the application needing resources with other applications running on a given node.” Application, ¶ 45. “Some applications are incompatible with each other. For example, OraDB1 and OraDB2 are incompatible and cannot be run on the same node at the same time.” Application, ¶ 65. Thus, the limitation noted in the Office Action relates to an inter-compatibility between applications: claim 1 includes detecting whether the one or more applications are compatible with the first application. Accordingly, Applicant respectfully submits that the “detecting whether one or more applications . . . are compatible” recited in claim 1 is not unclear.

Third, the Office Action expresses a concern that “it is unclear what constitutes reconfiguring the resources” in claim 1.

Applicant responds by respectfully noting that claim 1 does not recite a reconfiguring of resources. Rather, claim 1 recites determining whether “the first cluster can be reconfigured” (emphasis added). Claim 1 thus recites limitations relating to a reconfiguration of a cluster, not of resources. Claim 1 provides further specificity regarding this reconfiguring: the determining relates to whether the cluster can be reconfigured “to provide the first quantity of the resource to the first application.” Accordingly, Applicant respectfully submits that the determining whether the first cluster can be “reconfigured” recited in claim 1 is not unclear.

Fourth, the Office Action expresses a concern regarding the “second quantity” in claim 3.<sup>1</sup>

In an effort to further prosecution, Applicant has amended claim 1, on which claim 3 depends. Applicant respectfully submits that the amendment address the concern expressed in the Office Action regarding these recitations in claim 3.

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<sup>1</sup> The Office Action cites Applicant’s claim 2 as reciting “a second quantity.” Applicant understands this indication to be a minor clerical error, since claim 2 does not recite “a second quantity.” Applicant understands the Office Action’s concern as relating to claim 3, and has responded accordingly.

At least for these reasons, claims 1 and 3 and all claims dependent claims thereon are allowable under § 103(a). At least for similar reasons, claims 11, 16, 21, 5, 13, 15, 18, 20, 23, and 25 and all claims dependent claims thereon are also allowable under § 103(a).

**Rejection of Claims under 35 U.S.C. § 103(a)**

Claims 1, 2, 5-8, 11-12, 15-17, 20-22, and 25 stand rejected under 35 U.S.C. § 103(a) as purportedly being unpatentable over U.S. Patent No. 6,178,529 issued to Short et al. (“**Short**”), in view of U.S. Patent No. 6,990,606 issued to Schroiff et al. (“**Schroiff**”), in view of U.S. Patent No. 6,393,485 issued to Chao et al. (“**Chao**”). Claims 3, 9-10, 13, 18 and 23 stand rejected under § 103(a) as purportedly being unpatentable over Short in view of Schroiff in view of Chao, and further in view of U.S. Patent No. 7,308,687 issued to (“**Trossman**”). Claims 4, 14, 19, 24, and 27-30 stand rejected under § 103(a) as purportedly being unpatentable over Short in view of Schroiff in view of Chao, and further in view of U.S. Patent No. 6,366,945 issued to Fong et al. (“**Fong**”).

Applicant respectfully submits that the claims are allowable under § 103(a) because the cited passages fail to disclose each limitation of Applicant’s claims.

**1. The cited passages do not teach detecting whether one or more applications “are compatible” with a first application.**

Applicant’s independent claim 1 recites detecting whether one or more applications “**are compatible**” with the first application. At least this limitation is absent from the cited passages.

With regard to this limitation, the Office Action cites the following passage of Short:

To determine which system should take ownership of which groups, those systems capable of hosting the groups negotiate among themselves for ownership, based on system capabilities, current load, application feedback and/or the group’s system preference list.

Short, 7:38-43. The cited passage discloses that systems capable of hosting a group negotiate based on system capabilities, current load, application feedback, and/or “the group’s system

preference list.” But the cited passage fails to disclose the above-noted limitation for at least two reasons.

First, the cited determination in Short is based not on properties of applications, but on properties of systems (“system capabilities, current load, application feedback and/or the group’s system preference list”). A system is not an application. Thus, the cited determination does not detect properties of applications, as recited in claim 1.

Second, the cited passage fails to teach or suggest, in any way, a detection or determination of whether two applications “are compatible” with each other. No such consideration of compatibility between applications is disclosed in the above-cited passage. In particular, the cited passage fails to disclose detecting whether one or more applications “are compatible” with a first application, as recited in claim 1.

A rejection under § 103(a) may establish, among others, that “all the claimed elements were known in the prior art.” See, MPEP § 2143.02 (citing *KSR International Co. v. Teleflex Inc.*, 550 U.S. \_\_, \_\_, 82 USPQ2d 1385, 1395 (2007) (“KSR”)). The pending rejection of claim 1 attempts to meet this standard, but falls short because of above-noted infirmity of the cited passage of Short. The Office Action does not propose that this infirmity is remedied in other passages of Short, or in Schroiff or Chao. Moreover, Applicant does not find the relevant limitations in other passages of Short, or in Schroiff or Chao. At least for this reason, independent claim 1 and all claims dependent claims thereon are allowable under § 103(a). At least for similar reasons, independent claims 11, 16, and 21 and all claims dependent claims thereon are also allowable under § 103(a).

**2. The cited passages do not teach “comparing a priority” of one or more applications to a priority of a first application.**

In addition, Applicant’s independent claim 1 recites “comparing a priority” of at least one of the one or more applications to a priority of the first application. At least this limitation is also absent from the cited passages.

With regard to this limitation, the Office Action cites the following passages of Schroiff:

The method according to [Schroiff] accomplishes the foregoing by the steps of defining certain nodes of the cluster as failover

candidate nodes, storing configuration information for all the failover candidate nodes, distributing message information including but not limited to failure information of at least one failover candidate node amongst the failover candidate nodes, analyzing the distributed message information and the stored configuration information in order to determine whether to take over the service of a failure node by a failover candidate node or not, and updating the configuration information in case of at least one failover candidate node taking over the service of a failure node.

Schroiff, 2:55-67.

5. The method according to claim 4, wherein the failover candidate nodes receiving the priority key compare the received priority key with their own priority key whereby the best priority key wins the right to take over the service.

Schroiff, 9:17-20.

The cited passages disclose determining whether to take over the service of a failure node, and that a “candidate node[ ]” with the “best priority key” wins a right to take over the service. See Schroiff, 2:55-67, 9:17-20. These passages teach that a determination is made based on a comparison of properties of candidate nodes, not of applications. A candidate node is not an application. The cited passage fails to teach or suggest, in any way, a comparison of priorities, or any other properties, of applications. No such comparison between applications is disclosed in the above-cited passages. In particular, the cited passage fails to disclose “comparing a priority of at least one of the one or more applications to a priority of the first application,” as recited in Applicant’s claim 1.

For this additional and independent reason, the pending rejection of claim 1 attempts to meet the above-noted standard of KSR, but falls short because of this infirmity of the cited passages of Schroiff. The Office Action does not propose that this infirmity is remedied in other passages of Schroiff, or in Short or Chao. Moreover, Applicant does not find the relevant limitations in other passages of Schroiff, or in Short or Chao. At least for this reason, independent claim 1 and all claims dependent claims thereon are allowable under § 103(a). At least for similar reasons, independent claims 11, 16, and 21 and all claims dependent claims thereon are also allowable under § 103(a).

*New claims*

New claims 31-33 have been added. Claims 31-33 depend on independent claim 1, and are therefore allowable at least for the reasons discussed above.

Moreover, claim 31 additionally recites:

**comparing a remaining capacity of a candidate server in the first cluster to a load of the first application.**

These limitations are additionally absent from the cited passages of the references.

Moreover, claim 32 additionally recites:

**comparing a remaining capacity of a candidate server in the first cluster to a load of an application that is incompatible with the first application.**

These limitations are additionally absent from the cited passages of the references.

Moreover, claim 33 additionally recites:

**comparing a remaining capacity of a candidate server in the first cluster to a revised increased load of the first application.**

These limitations are additionally absent from the cited passages of the references.

At least for these additional reasons, claims 31-33 are additionally allowable.

**Conclusion**

In view of the amendments and remarks set forth herein, the application and the claims therein are believed to be in condition for allowance and a notice to that effect is solicited. Nonetheless, should any issues remain that might be subject to resolution through a telephonic interview, the Examiner is invited to telephone the undersigned at 512-439-5097.

If any extensions of time under 37 C.F.R. § 1.136(a) are required in order for this submission to be considered timely, Applicant hereby petitions for such extensions. The undersigned hereby authorizes that any fees due for such extensions or any other fee associated with this submission, as specified in 37 C.F.R. §§ 1.16 or 1.17, be charged to deposit account no. 502306.

I hereby certify that this correspondence is being submitted to the U.S. Patent and Trademark Office in accordance with 37 C.F.R. § 1.8 on May 7, 2010 (CT) by being (a) transmitted via the USPTO's electronic filing system; or (b) transmitted by facsimile to 571-273-8300; or (c) deposited with the U.S. Postal Service as First Class Mail in an envelope with sufficient postage addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

/ Cyrus F. Bharucha /  
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May 7, 2010  
Date

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